

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JOHN MUSKA-SMITH,

Defendant-Appellant.

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UNPUBLISHED

November 26, 2013

No. 312640

Calhoun Circuit Court

LC No. 2012-000622-FH

Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Michael John Muska-Smith was convicted by a jury of resisting or obstructing a police officer, MCL 750.81d(1), and resisting or obstructing a police officer causing injury, MCL 750.81d(2). He was sentenced as an habitual offender, third offense, MCL 769.11, to 30 to 48 months' imprisonment for the resisting or obstructing a police officer conviction and to 40 to 96 months' imprisonment for the resisting or obstructing a police officer causing injury conviction, to be served concurrently. He now appeals as of right. We affirm.

The convictions stem from an altercation that occurred while defendant was being processed for an unrelated offense at the intake facility of the Calhoun County jail. Deputy Dean DuVall of the Calhoun County Sheriff's Department was on duty and was responsible for moving new inmates through the intake process. Deputy DuVall asked defendant to move to the shower area of the intake facility and remove his clothing as part of a routine strip search procedure. Defendant refused to do so, arguing that he was about to post bond and did not wish to go through the intake process. Deputy DuVall repeated his order to defendant and a second officer, Deputy Stephen Zoss, arrived to assist. After uttering several profanities and threats to the officers, defendant removed his pants and shirt and threw them at Deputy DuVall. He then lunged toward Deputy DuVall and swung a closed fist. An altercation ensued. Deputies DuVall and Zoss wrestled with defendant for several minutes before more officers arrived to restrain him. Deputy DuVall sustained injuries to his face during the scuffle, including a laceration above his right eye that required seven stitches.

On appeal, defendant argues there was insufficient evidence that he resisted or obstructed the deputies or that he caused injury to Deputy DuVall. We disagree. We review a challenge to the sufficiency of the evidence de novo. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). To determine the sufficiency of the evidence, we look to "whether the

evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). We draw all reasonable inferences in favor of the prosecution and accord deference to the trier of fact on all credibility determinations. *Id.* at 400.

MCL 750.81d provides in pertinent part:

(1) Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(2) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a bodily injury requiring medical attention or medical care to that person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

With respect to MCL 750.81d(1), to satisfy its burden at trial the prosecution was required to establish, beyond a reasonable doubt, that “(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties.” *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). With respect to MCL 750.81d(2), the prosecution was required to establish, in addition to the two elements above, that defendant’s actions caused the police officer an injury requiring medical treatment. MCL 750.81d(2). The term “obstruct,” as defined in the statute, “includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a).

The prosecution presented sufficient evidence to convict defendant of both charges. Defendant does not dispute that Deputies DuVall and Zoss were police officers performing their official duties at the time of the altercation. Moreover, at trial Deputy DuVall testified that defendant was uncooperative and belligerent in response to his requests to remove his clothing. Deputy DuVall recounted the threats defendant made toward him and defendant’s acts of throwing his clothing at him before lunging at him and swinging his fist. Deputy Zoss corroborated Deputy DuVall’s account by testifying that defendant was non-compliant, uttered threats, and lunged at Deputy DuVall. Deputy Zoss witnessed defendant punch Deputy DuVall several times, including at least once in the face. Although defendant does not dispute that Deputy DuVall was injured, defendant’s theory is that the injury did not come from him but rather must have come from Deputy Zoss during the altercation. Deputy Zoss, however, testified that he never inadvertently punched Deputy DuVall. Both officers testified they repeatedly told defendant to stop resisting, to no avail. In addition, the prosecution presented the testimony of three other officers who witnessed the altercation at one stage or another and helped restrain defendant. All of these witnesses testified to seeing defendant wrestling with Deputies DuVall and Zoss and struggling to avoid being restrained. Finally, the prosecution presented photographs of the laceration above Deputy DuVall’s right eye, which required medical

treatment at a local emergency room. Based on the evidence, a reasonable jury could find beyond a reasonable doubt that defendant resisted and obstructed Deputy Zoss and resisted, obstructed, and assaulted Deputy DuVall causing him injury.

Defendant nevertheless argues his version of events should be believed over the version presented by the prosecution. At trial, defendant testified that while he was angry with Deputy DuVall's refusal to allow him to skip the strip search, he was otherwise cooperative. He claimed he never threw his clothing at Deputy DuVall, but merely slammed them on the counter near where Deputy DuVall was standing. In response, Deputy DuVall threw the clothes at defendant and then attacked him. Defendant testified he only resisted because Deputy DuVall had him in a stranglehold and he could not breathe. Defendant denied ever hitting Deputy DuVall and claimed Deputy Zoss inadvertently hit Deputy DuVall in the face during the altercation. It was, however, the province of the jury to resolve factual disputes, having had the "special opportunity to weigh the evidence and assess the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 228-229; 749 NW2d 272 (2008). Based on the verdict, it is clear the jury chose to discredit defendant's testimony in the face of the conflicting evidence. We will not disturb its finding.

Affirmed.

/s/ William C. Whitbeck  
/s/ Kurtis T. Wilder  
/s/ Amy Ronayne Krause